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MS. NEELU ARORA AND ANR.

v.

UNION OF INDIA AND ORS.

JANUARY 24, 2002

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[S. RAJENDRA BABU, K.G. BALAKRISHNAN AND P.
VENKATARAMA REDDI, JJ.]

Education:

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MBBS/BDS Courses—Admission to—Under 15% All-India quota—Scheme framed in Shrawan Kumar's case providing for two rounds of counselling—Modification of Scheme sought in order to provide third round of counselling—Held, Scheme framed by Court not to be read as a Statute—No inexorable rights conferred upon parties—Scheme has been framed to achieve a broad based equality—There is no scope for a third round of counselling under the scheme.

D

In *Shrawan Kumar's case**, the Supreme Court framed a scheme for admission to MBBS/BDS Courses under 15% All-India quota in various Colleges in the country. The Scheme provided for the last date of receipt of the vacancy position as September of each year and two rounds of counselling to be taken during the period prescribed therein. As per clause 14 of the scheme, If the Dean of the principal of any college does not notify the vacancy position due to non-joining of candidates in the first round of counselling before the date indicated therein, the seats allotted to such college will be treated as vacant and allotment of candidates will be made against these deemed vacant seats and it shall be the responsibility of the Dean or the Principal of the College concerned to give admission the those students.

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Some of the candidates filed the writ petition and some others filed an interlocutory application in another writ petition seeking modification of the Scheme. It was stated that the candidates who were allotted seats under the All-India quota may not have been given the course or college or place of their choice and in case later when they get allotment of their choice under the State quota, they will vacate the seats allotted to them under the All-India quota and in the process some more seats would fall vacant under the All-India quota. It was, therefore, submitted that a third

round of counselling may be permitted to be held for such vacant seats and the vacancies under 15% All-India quota should not be allowed to revert back to States. It was also stated that some of the States/Colleges did not intimate the vacancy position.

Dismissing the writ petition and the interlocutory application, the Court

HELD: 1.1. When a detailed scheme has been framed through orders of the Court prescribing also the manner in which it has to be worked out, if in a particular year there is any short fall or certain number of seats are not filled up, the same can not be done by adopting one more round of counselling because there is no scope for a third round of counselling under the Scheme. It would not be advisable to go on altering the scheme as and when seats are found vacant. What is to be borne in mind is that broad equality is to be achieved and not that it should result in any mathematical exactitude. [566-C, D]

**Sharwan Kumar, etc. etc. v. Director General of Health Services & Anr. etc. etc., [1993] 3 SCC 332, explained.*

1.2. The primary consideration in formulating the Scheme for creating a reservation in favour of candidates is broadly based on national approach as against the State based reservation. The Schemes framed by the Court should not be read as if they are Statues or that inexorable rights are conferred upon the parties. Moreover, there is no scope for admitting students midstream as that would be against the very spirit of statutes governing medical education. Even if some seats are unfilled that cannot be a ground for making mid-session admission and there cannot be telescoping of unfilled seats of one year with permitted seats of the subsequent year. [565-B, C; 566-F, G]

Dr. Pradeep Jain & Ors. etc. etc. v. Union of India & Ors. etc. etc. [1984] 3 SCC 654; Dr. Dinesh Kumar & Ors. v. Motilal Nehru Medical College & Ors., [1986] 3 SCC 727 and Medical Council of India v. Madhu Singh & Ors., [2002] 7 SCC 258, relied on.

Sharwan Kumar etc. etc. v. Director General of Health Services & Anr. etc. etc., [1993] 3 SCC 332, reiterated.

CIVIL APPELLATE JURISDICTION : Writ Petition (Civil) No. H

A 407/2001.

(Under Article 32 of the Constitution of India.)

WITH

B I.A. No. 14 in W.P. No 443/92

P.P. Malhotra, P.H. Parekh, R. Jawahar Lal, Ms. Shakum, Vinod Shukla, for M.C. Dhingra, Altaf Ahmed, ASG. Ms. Sunita Sharma, D.S. Mahra, Rudreshwar Singh, Prakash Srivastava, Tara Chand Sharma, Ajay Sharma, Ms. Neelam Sharma, Mrs. Revathy Raghavan, Ms. Krishna Sarma, Ms. Asha G. Nair, V.K. Sidaharan, J.R. Juwang, Ashok Srivastava, J.P. Dhanda, B.B. Singh, Kumar Rajesh Singh, Kh. Nobin Singh, A. Mariarputham, Ms. Aruna Mathur, Anurag D. Mathur, Anurag D. Mathur, Ramesh Babu M.R., K.L. Janjani, R.C. Verma, Mukesh Verma, Pankay Kumar Singh, Bhavanishakar V. Gadnis, Ms. Smita Inna, Ms. Divya Suri, H.A. Raichura Navin Prakash, Rahul Singh, Anil Srivastava, Anil Suhrawardy, B.S. Banthia, Ms. Anu Sawhney, Ms. Hemantika Wahi, V.G. Pragasam, Sanjay R. Hegde, Javed Mahmud Rao, Ms. Rachna Srivastava, Naresh K. Sharma, C.V. Subba Rao, Rajeev Sharma, Ms. Kamini Jaiswal, Guntur Prabhakar, Sushil Kumar Jain, (NP) and Radha Shyam Jena, for the appearing parties.

E The Judgment of the Court was delivered by

RAJENDRA BABU, J. The petitions are offshoot of a Scheme framed by this Court in *Sharwan Kumar etc. etc. v. Director General of Health Service & Anr. etc. etc.*, [1993] 3 SCC 332 prescribing the procedure to complete the process of allotment of 15 per cent All-India quota for admission to MBBS/BDS courses in various colleges in the country by September each year. The said Scheme was modified pursuant to an order made in I.A.No.10 of 2000 in WP(C) No. 443 of 1992 the dates fixed stand altered, as indicated therein, but we are not concerned with the same in these proceedings. The last date of receipt of vacancy position is fixed as September of each year and the IInd round of counselling is proposed to be taken during the period fixed therein.

Now in these petitions. It is contended that the IInd round of counselling for the All-India quota seats which was scheduled to be held have neither been held as the Pre-Medical Test (PMT) is not conducted nor counselling for the seats under the State quota is completed.

This Court in *Dr. Pradeep Jain & Ors. etc. etc. v. Union of India & Ors, etc. etc.*, [1984] 3 SCC 654 and *Dr. Dinesh Kumar & Ors. v. Motilal Nehru Medical College & Ors.*, [1986] 3 SCC 727, while disapproving of the total reservation on different scores in regard to admission of students in medical courses such as MBBS and post-graduate specialities, stated that "the very mandate of the equality clause viewed in the perspective of social justice would justify some extent of reservation preference for students passing the qualifying examination". The primary consideration in formulating the scheme for creating a reservation in favour of candidates is broadly based on national approach as against the State based reservation. This background resulted in the formulation of the Scheme, which is sought to be interpreted or modified now. We should not read the Schemes framed by this Court as if they are Statutes or that inexorable rights are conferred upon the parties. For the academic year 2001-2002, 1483 seats for MBBS course and 146 seats for BDS course, totalling 1629 seats were made available by the States under the 15% All-India Quota. On the basis of the results declared by respondent No.2, 2759 successful candidates were sent call letters. By the end of the first round of counselling, 86 seats remained un-filled to be allotted in the second round. Some States or colleges informed their vacancy position under 15% All-India Quota from first round of allotment amounting to 245 seats. However, some States have not intimated vacancy position even as late as 5.9.2001.

It is submitted that the candidates from these States who have been allotted seats in the first round of allotment may not have been given the course or college or place of their choice and in case later on they get the allotment of their choice under the State quota, then they will vacate the seats allotted to them under the All-India Quota. Hence they apprehend that more than 700 seats will fall vacant once the counselling is conducted in the aforesaid States. Therefore, it is submitted that a IIIrd round of counselling is required to be held and that the vacant seats, if any, should arise in the 15 per cent All-India Quota seats should not be allowed to revert back to the States/Colleges after September 2001 and that instead successful and meritorious candidates in the All-India Quota should be allotted these seats or such other orders as necessary may be passed.

As per clause 14 of the Scheme if the Dean or the Principal of the concerned college does not notify the vacancy position due to non-joining of candidates or candidate in the first round of counselling before the date indicated therein, the seats allotted to the college will be treated as vacant and allotment of candidates will be made against these deemed vacant seats and

A it shall be the responsibility of the Dean of the Principle of the concerned college to give admission to those candidates. The IInd round of allotment by personal appearance will be for candidates who were allotted a seat in the first round and who wish to change their allotted college/course and wish to join the same against vacancies arising due to non-joining of the candidates allotted in first round of personal appearance and for candidates on the merit list who could not be considered for allotment in the first round. It is thus the IInd round of counselling by personal appearance was to be concluded by a particular date.

C When a detailed scheme has been framed through orders or this Court and the manner in which it has to be worked out is also indicated therein, we do not think that if in a particular year there is any short fall or certain number of seats are not filled up, the same should be done by adopting one more round of counselling because there is no scope for the third round of counselling under the Scheme. It would not be advisable to go on altering the scheme as and when seats are found vacant. What is to be borne in mind is that broad equality will have to be achieved and not that it should result in any mathematical exactitude. Out of about 1600 seats, if 250 seats are not filled up for various reasons, we do not think it should result in the third round of counselling. If that process is to be adopted then there will be again vacancies and further filling up of the seats falling vacant will have to be undertaken. In that process, it will become endless until all the seats under the All-India Quota are filled up. That is not the object of the Scheme formulated by this Court. The object was to achieve a broad based equality as indicated by us at the outset and we do not think that any steps have to be taken for altering the Scheme. Moreover, this Court in *Medical Council of India v. Madhu Singh & Ors.*, [2002] 7 SCC 258, has taken the view that there is no scope for admitting students midstream as that would be against the very spirit of statutes governing medical education. Even if seats are unfilled that cannot be a ground for making mid-session admissions and there cannot be telescoping of unfilled seats of one year with permitted seats of the subsequent year. If these aspects are borne in mind we do not think any reliefs as sought for by the petitioners can be granted under these petitions.

Interlocutory Applications filed shall stand disposed of in view of the order made by us in the main petitions.

These petitions shall stand dismissed.

H R.P.

Petitions dismissed.